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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

MICHAEL REGAN¹, as the Administrator of
the United States Environmental Protection
Agency, *et al.*,

Defendants,

and

STATE OF GEORGIA, *et al.*,

Defendant-Intervenors.

Case No. 3:20-cv-03005-RS

PARTIES' JOINT STATUS REPORT

Action Filed: May 1, 2020

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¹ Pursuant to Fed. R. Civ. P. 25(d), Michael Regan is automatically substituted in place of Andrew Wheeler.

Pursuant to this Court’s April 16, 2021 order, *see* Dkt. No. 241, Plaintiffs², Defendants (“Agencies”)³, and State Intervenor-Defendants⁴ (collectively, the “Parties”) hereby submit the following joint status report regarding the status of the Agencies’ review of the Navigable Waters Protection Rule (“NWPR”), 85 Fed. Reg. 22,250 (Apr. 21, 2020). *See* Dkt. No. 241 at 2. The Agencies further give notice that they intend to file a motion to remand the NWPR to the Agencies and to dismiss this action.

I. Status of the Agencies’ Review of the NWPR.

Executive Order 13990, entitled “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” 86 Fed. Reg. 7037 (Jan. 25, 2021) (“EO 13990”), directed federal agencies to “immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.” *Id.* The Agencies have since been reviewing the NWPR. As a result of this review, the Agencies have decided to

² Plaintiffs are the States of California, New York, Connecticut, Illinois, Maine, Maryland, Michigan, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington and Wisconsin, the Commonwealths of Massachusetts and Virginia, the North Carolina Department of Environmental Quality, the District of Columbia, and the City of New York.

³ Defendants are the Defendants United States Environmental Protection Agency (“EPA”), EPA Administrator Michael Regan, United States Army Corps of Engineers, and Acting Assistant Secretary of the Army for Civil Works Mr. Taylor N. Ferrell (“Defendants” or “Agencies”). EPA Administrator Michael Regan is automatically substituted for Andrew Wheeler, and Taylor N. Ferrell is automatically substituted for R.D. James, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

⁴ State Intervenor-Defendants are the States of Georgia, West Virginia, Alabama, Alaska, Arkansas, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming.

1 initiate new rulemaking to define “waters of the United States.”⁵ *See also Conservation Law*
 2 *Foundation v. EPA*, 20-cv-10820-DPW (D. Mass) at Dkt. No. 113 (June 9, 2021).

3 **II. Plans to Seek a Further Stay, Enlargement of Deadlines, or other Motions.**

4 The Agencies are still contemplating whether to seek a further abeyance of this
 5 proceeding. In the meantime, now that the Agencies have completed their review of the
 6 NWPR in accordance with EO 13990 and have decided to commence a new rulemaking to
 7 revise or replace the NWPR, the Agencies intend to file a motion to remand the NWPR to the
 8 Agencies and to dismiss the suit. The Agencies have conferred with the parties regarding this
 9 motion. State Intervenor-Defendants maintain that this Court continues to have jurisdiction to
 10 decide this case and that a proposed future rulemaking of indefinite duration is not a proper
 11 basis for declining to exercise that jurisdiction. State Intervenor-Defendants reserve the right to
 12 oppose the Agencies’ forthcoming motion for remand without vacatur. Plaintiffs reserve all of
 13 their rights with regards to the Agencies’ forthcoming motion for remand without vacatur.

14 The Agencies intend to file this motion for remand no later than July 16, 2021.
 15 Accordingly, the Agencies further request that all existing deadlines be stayed until the
 16 resolution of the Agencies’ motion for remand. Plaintiffs support this request by the Agencies.
 17 The Parties will file a joint or separate proposal to govern the proceedings no later than 14 days
 18 from the date the motion for remand is decided.

19 Dated: June 10, 2021

Respectfully submitted,

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28 ⁵See <https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus>
 (last accessed June 9, 2021).

/s/Hubert T. Lee

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